

Feb 08, 2018

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

LISA MAHONEY,

Plaintiff,

v.

COMMISSIONER OF SOCIAL

SECURITY ADMINISTRATION,

Defendant.

No. 1:17-cv-03106-SAB

**ORDER GRANTING  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT;  
DENYING DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT**

Before the Court are Plaintiff Lisa Mahoney's Motion for Summary Judgment, ECF No. 10, and Defendant Commissioner of the Social Security Administration's Cross-Motion for Summary Judgment, ECF No. 11. The motions were heard without oral argument. Plaintiff is represented by D. James Tree, and Defendant is represented by Assistant United States Attorney Timothy Durkin and Special Assistant United States Attorney Joseph Langkamer. For the reasons set forth below, the Court **grants** Plaintiff's motion, **denies** Defendant's motion, **reverses** the administrative law judge ("ALJ"), and **remands** for a determination of Social Security payments with an onset date of February 18, 2012.

**Jurisdiction**

On September 20, 2013, Plaintiff filed an application for supplemental security income disability insurance benefits after having a prior denial in February 2012. Plaintiff alleges an onset date of February 18, 2012.

//

**ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY  
JUDGMENT; DENYING DEFENDANT'S MOTION FOR SUMMARY  
JUDGMENT + 1**

1 Plaintiff's application was denied initially and on reconsideration. On  
2 August 21, 2015, Plaintiff appeared and testified at a hearing held in Yakima,  
3 Washington before an ALJ. The ALJ issued a decision on November 4, 2015,  
4 finding that Plaintiff was not disabled. Plaintiff timely requested review by the  
5 Appeals Council, which denied the request on April 5, 2017. The Appeals  
6 Council's denial of review makes the ALJ's decision the final decision of the  
7 Commissioner.

8 Plaintiff filed a timely appeal with the United States District Court for the  
9 Eastern District of Washington on June 8, 2017. The matter is before this Court  
10 pursuant to 42 U.S.C. § 405(g).

### 11 **Sequential Evaluation Process**

12 The Social Security Act defines disability as the "inability to engage in any  
13 substantial gainful activity by reason of any medically determinable physical or  
14 mental impairment which can be expected to result in death or which has lasted or  
15 can be expected to last for a continuous period of not less than twelve months." 42  
16 U.S.C. § 1382c(a)(3)(A). A claimant shall be determined to be under a disability  
17 only if her impairments are of such severity that the claimant is not only unable to  
18 do her previous work, but cannot, considering claimant's age, education, and work  
19 experiences, engage in any other substantial gainful work which exists in the  
20 national economy. 42 U.S.C. § 1382c(a)(3)(B).

21 The Commissioner has established a five-step sequential evaluation process  
22 for determining whether a person is disabled. 20 C.F.R. § 416.920(a)(4); *Bowen v.*  
23 *Yuckert*, 482 U.S. 137, 140-42 (1987).

24 Step 1: Is the claimant engaged in substantial gainful activities? 20 C.F.R.  
25 § 416.920(b). Substantial gainful activity is work done for pay and requires  
26 compensation above the statutory minimum. *Id.*; *Keyes v. Sullivan*, 894 F.2d 1053,  
27 1057 (9th Cir. 1990). If the claimant is engaged in substantial activity, benefits are  
28 denied. 20 C.F.R. § 416.971. If he is not, the ALJ proceeds to step two.

1 Step 2: Does the claimant have a medically-severe impairment or  
2 combination of impairments? 20 C.F.R. § 416.920(c). If the claimant does not have  
3 a severe impairment or combination of impairments, the disability claim is denied.  
4 A severe impairment is one that lasted or must be expected to last for at least  
5 twelve months and must be proven through objective medical evidence. 20 C.F.R.  
6 § 416.908-.909. If the impairment is severe, the evaluation proceeds to the third  
7 step.

8 Step 3: Does the claimant's impairment meet or equal one of the listed  
9 impairments acknowledged by the Commissioner to be so severe as to preclude  
10 substantial gainful activity? 20 C.F.R. § 416.920(d); 20 C.F.R. § 404 Subpt. P. App.  
11 1. If the impairment meets or equals one of the listed impairments, the claimant is  
12 conclusively presumed to be disabled. *Id.* If the impairment is not one  
13 conclusively presumed to be disabling, the evaluation proceeds to the fourth step.

14 Before considering step four, the ALJ must first determine the claimant's  
15 residual functional capacity. 20 C.F.R. § 416.920(e). An individual's residual  
16 functional capacity is his ability to do physical and mental work activities on a  
17 sustained basis despite limitations from her impairments.

18 Step 4: Does the impairment prevent the claimant from performing work she  
19 has performed in the past? 20 C.F.R. § 416.920(f). If the claimant is able to  
20 perform her previous work, she is not disabled. *Id.* If the claimant cannot perform  
21 this work, the evaluation proceeds to the fifth and final step.

22 Step 5: Is the claimant able to perform other work in the national economy in  
23 view of his age, education, and work experience? 20 C.F.R. § 416.920(g).

24 The initial burden of proof rests upon the claimant to establish a prima facie  
25 case of entitlement to disability benefits. *Tackett v. Apfel*, 108 F.3d 1094, 1098 (9th  
26 Cir. 1999). This burden is met once a claimant establishes that a physical or mental  
27 impairment prevents him from engaging in his previous occupation. *Id.* At step five,  
28 the burden shifts to the Commissioner to show that the claimant can perform other

**ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY  
JUDGMENT; DENYING DEFENDANT'S MOTION FOR SUMMARY  
JUDGMENT + 3**

1 substantial gainful activity. *Id.*

## 2 **Standard of Review**

3 The Commissioner's determination will be set aside only when the ALJ's  
4 findings are based on legal error or are not supported by substantial evidence in the  
5 record as a whole. *Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir. 1992) (citing  
6 42 U.S.C. § 405(g)). Substantial evidence is "more than a mere scintilla,"  
7 *Richardson v. Perales*, 402 U.S. 389, 401 (1971), but "less than a preponderance."  
8 *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975). Substantial  
9 evidence is "such relevant evidence as a reasonable mind might accept as adequate  
10 to support a conclusion." *Richardson*, 402 U.S. at 401. The Court must uphold the  
11 ALJ's denial of benefits if the evidence is susceptible to more than one rational  
12 interpretation, one of which supports the decision of the administrative law judge.  
13 *Batson v. Barnhart*, 359 F.3d 1190, 1193 (9th Cir. 2004). The Court reviews the  
14 entire record. *Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir. 1985). "If the evidence  
15 can support either outcome, the court may not substitute its judgment for that of the  
16 ALJ." *Matney*, 981 F.2d at 1019.

17 A decision supported by substantial evidence will be set aside if the proper  
18 legal standards were not applied in weighing the evidence and making the decision.  
19 *Brawner v. Secr'y of Health & Human Servs.*, 839 F.2d 432, 433 (9th Cir. 1988).  
20 An ALJ is allowed "inconsequential" errors as long as they are immaterial to the  
21 ultimate nondisability determination. *Stout v. Comm'r, Soc. Sec. Admin.*, 454 F.3d  
22 1050, 1055 (9th Cir. 2006).

## 23 **Statement of Facts**

24 The facts have been presented in the administrative record ("AR"), the  
25 ALJ's decision, and the briefs to this Court; only the most relevant facts are  
26 summarized here. At the time of the hearing, Plaintiff was thirty-nine years old.  
27 She has a high school degree and has previously worked as a waitress, receptionist,  
28 office assistant, cashier, and nursing assistant. She lives with her three children and

1 requires help from her mother and boyfriend to care for them. Plaintiff also  
2 requires assistance with grocery shopping, cooking, and housework.

3 Plaintiff has been diagnosed with Sjögren's syndrome ("Sjögren's"), an  
4 autoimmune disease. Sjögren's involves the lacrimal and salivary glands resulting  
5 in dry eyes and dry mouth and can also result in corneal damage, eyelid  
6 inflammation, difficulty in swallowing, dental caries, inability to speak for  
7 extended periods, and persistent dry cough. 20 C.F.R. Pt. 404, Subpt. P, App. 1, Pt.  
8 A2. Sjögren's frequently involves other organ systems including musculoskeletal,  
9 respiratory, gastrointestinal, genitourinary, skin, neurologic, mental, and neoplastic.  
10 *Id.* A person with Sjögren's often experiences severe fatigue and malaise and may  
11 suffer from other autoimmune disorders. *Id.* Plaintiff's symptoms include  
12 significant dryness, difficulty swallowing, coughing, fatigue, synovitis, thickened  
13 PIP joints, joint pain, and abnormal liver function. She also has been losing her  
14 hair and teeth. In addition to hypersomnia, Dr. Lincoln Westfall, D.O., found a  
15 sleep latency of one minute, which is consistent with narcolepsy. Plaintiff also has  
16 severe Gastroesophageal Reflux Disease ("GERD") and asthma. She has had  
17 bronchitis on multiple occasions. Plaintiff also suffers from anxiety making it  
18 difficult to leave her house and see a counselor. She also has lupus.

### 19 **The ALJ's Findings**

20 At step one, the ALJ found Plaintiff has not engaged in substantial gainful  
21 activity since September 20, 2013. AR 24.

22 At step two, the ALJ found Plaintiff has the following severe impairments:  
23 anxiety disorder; Sjögren's syndrome; gastroesophageal reflux disease ("GERD");  
24 asthma, and narcolepsy. AR 24.

25 At step three, the ALJ found that Plaintiff's impairments or combination of  
26 impairments do not meet or medically equal any Listing. AR. 25.

27 The ALJ concluded that Plaintiff has the residual functional capacity to  
28 perform:

**ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY  
JUDGMENT; DENYING DEFENDANT'S MOTION FOR SUMMARY  
JUDGMENT + 5**

1 [L]ight work as defined in 20 CF 416.967(b) with the following  
2 additional limitations: the claimant can lift or carry 20 pound  
3 occasionally and 10 pounds frequently. She can, with normal breaks,  
4 stand or walk for 6 hours in an 8 hour workday and sit for 6 hours in  
5 an 8 hour workday. She can have occasional exposure to extreme cold  
6 or atmospheric conditions. She should avoid operation of heavy  
7 equipment. The claimant can have infrequent superficial interaction  
8 with the general public, and occasional interaction with coworkers or  
supervisors. Work tasks should be such that they can be completed  
without assistance but the claimant could tolerate occasional  
assistance.

9 AR. 27. At step four, the ALJ found that Plaintiff is incapable of performing any  
10 past relevant work. AR 30.

11 At step five, the ALJ found Plaintiff was not disabled on the basis that she  
12 could perform other work which exists in significant numbers in the national  
13 economy, including positions such as production assembler, packing line worker,  
14 and cleaner, housekeeping. AR 31. If Plaintiff could only perform sedentary work,  
15 she would be able to perform the work requirements of document preparer, escort  
16 vehicle driver, and assembler. AR 31-32.

### 17 **Issues for Review**

- 18 1. Did the ALJ reversibly err by failing to properly assess whether Plaintiff met or  
19 equaled Listing 14.10?  
20 2. Did the ALJ reversibly err by failing to properly assess the opinion evidence?  
21 3. Did the ALJ reversibly err by discrediting Plaintiff without specific, clear, and  
22 convincing reasons to do so?

### 23 **Discussion**

- 24 1. Did the ALJ reversibly err by failing to properly assess whether Plaintiff met or  
25 equaled Listing 14.10?

26 Step three of the sequential evaluation process requires the ALJ to determine  
27 whether Plaintiff's impairment meets or equals any of the listed impairments  
28 described in the regulations. 20 C.F.R. §§ 404.1520(d), 416.920(d). A claimant is

**ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY  
JUDGMENT; DENYING DEFENDANT'S MOTION FOR SUMMARY  
JUDGMENT + 6**

1 conclusively disabled if she meets or equals one of the listed impairments  
2 acknowledged by the Commissioner to be so severe as to preclude substantial  
3 gainful activity. 20 C.F.R. § 416.920(d); 20 C.F.R. § 404 Subpt. P. App. 1. To  
4 meet a listed impairment, a disability claimant must establish that her condition  
5 satisfies each element of the listed impairment in question. *See Sullivan v. Zebley*,  
6 493 U.S. 521, 530 (1990); *Tackett*, 180 F.3d at 1099. To equal a listed impairment,  
7 a claimant must establish symptoms, signs, and laboratory findings at least equal in  
8 severity and duration to each element of the most similar listed impairment. *Tackett*,  
9 180 F.3d at 1099-1100 (quoting 20 C.F.R. § 404.1526). “An ALJ must evaluate the  
10 relevant evidence before concluding that a claimant’s impairments do not meet or  
11 equal a listed impairment. A boilerplate finding is insufficient to support a  
12 conclusion that a claimant’s impairment does not do so.” *Lewis v. Apfel*, 236 F.3d  
13 503, 512 (9th Cir. 2001).

14 A claimant meets Listing 14.10:

15 With involvement of two or more organs/body systems, and with:

16 1. One of the organs/body systems involved to at least a moderate  
17 level of severity; and

18 2. At least two of the constitutional symptoms and signs (severe  
19 fatigue, fever, malaise, or involuntary weight loss).

20 or

21 B. Repeated manifestations of Sjögren’s syndrome, with at least two  
22 of the constitutional symptoms or signs (severe fatigue, fever, malaise,  
23 or involuntary weight loss) and one of the following at the marked  
24 level:

25 1. Limitation on activities of daily living.

26 2. Limitation in maintaining social functioning.

27 3. Limitation in completing tasks in a timely manner due to  
28 deficiencies in concentration, persistence, or pace.

1 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 14.10.

2 The ALJ concluded that Plaintiff did not meet the listing of 14.10(A), but  
3 did not expressly analyze whether she met the listing of 14.10(B). The ALJ  
4 ultimately found that:

5 [C]laimant's symptoms do not meet or medically equal the listing, as  
6 the evidence does not show the involvement of two or more  
7 organs/body systems with one of the organs/body systems involved to  
8 a[t] least a moderate level of severity with at least two constitutional  
9 symptoms or signs, including severe fatigue, fever, malaise, or  
10 involuntary weight loss.

11 AR 24. Plaintiff argues that the ALJ erred by giving no meaningful assessment of  
12 whether Plaintiff met or equaled this listing. The Court agrees. The ALJ's use of  
13 boilerplate language gives the Court no indication that the ALJ properly evaluated  
14 the evidence of Plaintiff's Sjögren's. Indeed, the ALJ did not discuss whether  
15 Plaintiff met or equaled the listing of 14.10(B). The ALJ's failure to properly  
16 consider the evidence constitutes reversible error.

17 Moreover, the record demonstrates that Plaintiff satisfied her burden of  
18 showing that she meets Listing 14.10(A). First, Plaintiff's Sjögren's involves two  
19 or more organs and/or body systems, including her hair, teeth, skin, thyroid, joints,  
20 and liver.

21 Second, at least one of the aforementioned organs/body systems is of  
22 moderate severity. Plaintiff has lost much of her hair and several teeth as a result of  
23 her Sjögren's. She has had liver irregularities and thyroid dysfunction and has  
24 frequent rashes. Her rashes became so severe she chose to treat them before  
25 addressing the underlying disease.

26 Third, Plaintiff also exhibits at least two of the constitutional symptoms or  
27 signs. Plaintiff experiences severe fatigue and has had a sleep latency as little as  
28 one minute. She falls asleep without realizing she has done so approximately four



1 times a day. The ALJ found that narcolepsy was a severe impairment. Plaintiff  
2 further testified that she feels tired all of the time, which makes it difficult for her  
3 to complete tasks. This is reflected in treatment notes. Further, the record reflects  
4 that Plaintiff experiences malaise.<sup>1</sup> Throughout treatment, Plaintiff uniformly  
5 complained of pain and bodily discomfort; before, during, and after exercise. She  
6 was treated for depression and has severe anxiety; she does not wish to leave the  
7 house. Plaintiff also had recurrent upper respiratory tract infections, dry mouth,  
8 and frequent cough which has caused her to vomit. She also complained of severe  
9 joint and back pain that affects the activities of her daily living; she is unable to  
10 shop for groceries or cook and requires assistance with housework. When she does  
11 perform housework, she requires several breaks. Additionally, the record indicates  
12 involuntary weight loss; Plaintiff lost thirty pounds in a four-month timespan, as  
13 noted by her physician. Accordingly, Plaintiff has met her burden of demonstrating  
14 that she meets Listing 14.10(A) and the ALJ erred in failing to consider all of the  
15 evidence and finding otherwise.

16 Because Plaintiff meets the Listing of 14.10(A), she is conclusively  
17 presumed disabled and the proper remedy is to remand for an immediate award of  
18 benefits. The record is fully developed and further proceedings “would serve no  
19 useful purpose.” *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995).

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 \_\_\_\_\_

28 <sup>1</sup> Malaise means “frequent feelings of illness, bodily discomfort, or lack of well-being that result in significantly reduced physical activity or mental function.” 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 14.00.

Accordingly, **IT IS HEREBY ORDERED:**

1. Plaintiff's Motion for Summary Judgment, ECF No. 10, is **GRANTED**.

2. Defendant's Motion for Summary Judgment, ECF No. 11, is **DENIED**.

3. The decision of the Commissioner denying benefits is **reversed** and **remanded** for an award of benefits, with a disability onset date of February 18, 2012.

4. The District Court Executive is directed to enter judgment in favor of Plaintiff and against Defendant.

**IT IS SO ORDERED.** The District Court Executive is hereby directed to file this Order, provide copies to counsel, enter judgment, and close the file.

**DATED** this 8th day of February 2018.



A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

Stanley A. Bastian  
United States District Judge